

# EMPLOYMENT LAW SUMMARY

## Michigan: Wage Payment Requirements



*Because You're Different*

Workplace federal laws regulate wage payments. These include the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. Michigan law also imposes state wage payment requirements. When federal and state laws are different, the law that is more favorable to the employee will apply.

The Michigan [Department of Labor and Economic Opportunity](#) (LEO) enforces wage payment standards throughout the state.

### METHOD OF PAYMENT

Under Michigan law, employers are prohibited from charging or requiring their employees to pay any fees or costs connected to any wage payment process. In addition, employers must pay wages in lawful United States currency with cash, check, direct deposit or payroll debit card. A payroll debit card is defined as a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee immediate access to his or her wages through a network of automatic teller machines (ATMs). The term includes cards that are commonly known as payroll debit cards, payroll cards or pay cards.

Employees have the option to change their method of payment at any time. Employers may not take longer than one pay period to implement a requested change, provided they receive all the required information. Employers must allow employees to select payment by direct deposit or payroll debit card freely and in writing, without intimidation, coercion or fear of discrimination or reprisal for the choice. However, employers may require their employees to receive payment through direct deposit or payroll debit card if they provide the employees with:

- A written form that provides the employees with the option to receive wages by direct deposit or payroll debit card; and
- A statement indicating that failing to submit the written form described above and all information required to process a direct deposit wage payment will be presumed automatic consent to receive wages by payroll debit card (however, employers may not assume consent for paying wages with payroll debit cards for employees that are currently enrolled in direct deposit payment).

In addition, employers must provide a written disclosure of payroll debit card terms and conditions. Specifically, the disclosure must include:

- The terms and conditions of use;
- An itemized list of any and all fees;
- Instructions for accessing wages without charge and for obtaining free balance inquiries;
- A statement explaining that using the card outside the specified ATM network may result in additional finance charges;
- An explanation of each employee's right to elect to change his or her wage payment method at any time; and
- A disclaimer explaining that payroll debit cards do not provide access to a savings or checking account.

Finally, in the case of payroll debit cards, employers must ensure that the card is not linked to any form of credit, including a loan against future pay or cash advances on future pay.

## FREQUENCY OF PAYMENT

In general, employers must pay employee wages at least twice per month, according to the schedule shown in the table below.

<b>Wages Earned During:</b>	<b>Must Be Paid By:</b>
The first 15 days of the month	The first day of the following month
The second half of the month	The 15th day of the following month

However, any hand harvesting employees must be paid on a weekly basis, and the wage payments made to these types of workers must be made by the second day of the workweek following the week when the wages were earned. In addition, employers may opt to use a monthly payment schedule if they establish regular paydays on or before the first day of each calendar month where they pay all wages earned during the preceding month.

## LAST PAYMENT OF WAGES

Michigan laws regulate how employers must pay an employee's last wages in cases of termination, resignation or employee death.

### **TERMINATION AND VOLUNTARY RESIGNATION**

Michigan law requires employers to pay an employee's last wages as soon as the amount of the last wages can be determined with due diligence. The LEO has interpreted this requirement as an employer's duty to pay an employee's last wages (including all payable fringe benefits) by the regularly scheduled payday following the period in which the resignation or discharge occurs. If determining an employee's last wages is not possible (such as where an employee works under a contract), employers must pay the best wage estimate by the payday following the period in which the resignation or discharge occurs. For a hand-harvesting employee, an employer must pay wages within:

- Three days, if the employee resigned voluntarily; or
- One working day, if the employee was discharged.

### **DECEASED EMPLOYEES**

When paying a deceased employee's last wages, employers must first honor the terms of any written contract or plan the employee signed and supplied to the employer prior to his or her death (if letters of administration are not required). In the absence of a bona fide, written plan establishing an employee's wage beneficiaries, employers must pay a deceased employee's wages to the following survivors (in order of priority):

1. Spouse
2. Children
3. Parent
4. Siblings

## WITHHOLDINGS AND DEDUCTIONS

Employers may not withhold any portion of an employee's wages unless the withholding or deduction is authorized by law or by the employee. Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions such as child support. A deduction is authorized by an employee only if the employer has received the full, free and written consent of the employee (without intimidation or fear of discharge for refusal to allow the deduction). Common deductions authorized by employees include amounts for:

- Retirement plans and supplemental retirement plans;
- Stock purchases;
- Loan payments;
- Loan or wage advances;
- Employer goods or services;
- Employer equipment or property;
- Participation in hospitalization and medical insurance plans;
- Savings plans and deposits to financial institutions; and
- Charitable donations (a special written consent is required to authorize deducting charitable donations that will benefit the employer).

The cumulative effect of all wage withholdings and deductions may not reduce an employee's paid wages below the state minimum wage rate. In addition, employers must record each wage deduction and may not prorate deductions between two or more employees. Employees that believe their employer has violated a withholding or deduction violation may file a complaint with the LEO within 12 months of the alleged violation.

### **EXCEPTION FOR WAGE OVERPAYMENTS**

Employers may deduct wage overpayments without obtaining employees' written consent as long as the deductions are made within six months of an error and:

- The overpayment was the result of a mathematical miscalculation, typographical error, clerical error or misprint in the processing of the employee's regularly scheduled wages or fringe benefits;
- The error was made by the employer, the employee or a representative of the employer or employee;
- The employer provides the employee with a written explanation of the deduction at least one pay period before the wage payment affected by the deduction is made;
- The deduction is not greater than 15 percent of the gross wages earned in the pay period in which the deduction is made;
- The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction; and
- The deduction does not reduce the employee's regular wages below the greater of the state or federal minimum wage rate.

### **STATEMENTS**

Employers must provide each employee with an itemized statement at the time his or her wages are paid. At minimum, the itemized statement must show:

- Gross wages earned;
- An itemization of fringe benefits;
- All withholdings and deductions for that pay period;
- The amount accrued compensatory time off;
- The inclusive dates of the period; and
- The number of hours worked.

Employers must also provide each employee with a record of any compensatory time off they have accrued.

### **PENALTIES**

Employers that violate Michigan's wage payment laws may be ordered to pay:

- All unpaid wages and fringe benefits owed to an employee;
- A penalty equal to 10 percent of all unpaid wages for every year between the time the employer was notified that a complaint was filed and the final payment is made;
- Attorney's fees, hearing costs and transcript expenses;
- Exemplary damages equal to up to twice the amount of wages and fringe benefits due and unpaid (if the violation is flagrant or repeated); and
- A civil penalty of up to \$1,000.

### **CRIMINAL PENALTIES**

In addition, employers that issue wage payment checks that cannot be paid may be charged with a misdemeanor, punishable by a fine of up to \$1,000, imprisonment for up to one year or both. These charges apply if, at the time a check is issued, an employer knows or should know that the check would not be paid. The law presumes that an employer knew or should have known a check would not be paid if, at the time the check is issued, there is proof that the employer:

- Did not have an account with the organization that must pay the check (usually a bank);
- Had insufficient funds or credit to cover or honor the check;
- Fails to pay a dishonored check within five days of receiving a notice that the check was dishonored or not paid; or
- Did not have sufficient funds or credit to honor the check within five days even after a check is presented and a notice of nonpayment or dishonored check is issued.

## **MORE INFORMATION**

Contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in Michigan.

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